46 Am. Jur. 2d Judges § 8

American Jurisprudence, Second Edition | February 2022 Update

Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Qualification and Selection

§ 8. Method of selection of judge—Election

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Judges 3, 4, 5

Forms

Forms relating to elections for judges, generally, see Am. Jur. Legal Forms 2d, Judges [Westlaw®(r) Search Query]

In some states, judges are elected by the vote of the people[1] on nonpartisan ballots.[2] Within constitutional limits, the legislature generally may prescribe the time and manner of conducting elections for judges.[3] Thus, it is sometimes provided by constitution that judges must be elected by the qualified voters of the district or circuit to which they are to be assigned.[4] A statute may also provide for the postponement of elections for judge in cases where the office was vacated between the last date to file nomination documents and the primary election date.[5] However, the Secretary of State was required to place an appointed judge on the general election ballot, after that judge replaced a district court judge who resigned after the primary election but more than 56 days prior to the general election, where the vacancy was an office required by the state constitution to be filled at the next general election, and 60 days prior to the general election, the State Central Committee of the Republican Party wrote to the Secretary of State nominating the appointed judge to be placed on the general election ballot.[6] With respect to a putative candidate's designating petition, seeking to be designated as a political party's candidate for position as family court judge in a primary election, validating two signature sheets that the elections board invalidated because witness statements were printed on separate sheets that were stapled to signature sheets was warranted based on substantial compliance with the statutory requirements.[7]

The legislature may require a candidate for judicial office to pay a qualifying fee so long as it is not palpably arbitrary and unreasonable.[8]

Observation:

States have a vital interest in safeguarding public confidence in the fairness and integrity of elected judges; the judiciary's authority depends in large measure on the public's willingness to respect and follow its decisions.[9] A state's interest in preserving public confidence in the integrity of its judiciary extends beyond its interest in preventing the appearance of corruption in legislative and executive elections, and states may regulate judicial elections differently than they regulate political elections, because the role of judges differs from the role of politicians.[10]

Attorneys who are judicial candidates must comply with the state code of judicial conduct regulating campaign conduct of candidates for judicial office.[11] However, rules or regulations which prohibit judicial candidates from announcing their views on "disputed political or legal issues" during a campaign may be found to be in violation of the First Amendment.[12]

A judge's activities with respect to the expenditure of funds by a political party to air a television commercial prepared by the judge in connection with a reelection campaign did not rise to the level of active involvement or interaction in consultation, cooperation, or coordination needed to render the party's expenditure an in-kind contribution, within the scope of the applicable canon of judicial conduct; although the judge participated in the decision to create the advertisement at issue, the judge had no involvement in the party's decision to air that ad, and the party contacted the state supreme court regarding the advertising and acted on information thus obtained, excluding the judge from decision-making.[13] An "in-kind contribution" within the scope of the canon of the code of judicial conduct governing campaign expenditures must be made with the consent, coordination, cooperation, or consultation of the judicial candidate or the candidate's agent, or at the request or suggestion of the judicial candidate or agent of that candidate; there can be no such expenditure absent a meeting of the minds, including informal or de facto arrangements, with respect to the intended advertising, with an agreement being an essential component of such an expenditure.[14] A judicial campaign expenditure "made with the consent of, in coordination, cooperation, or consultation with, or at the request or suggestion of a judicial candidate, [or] the campaign committee or agent of the judicial candidate" refers to one made with more than mere knowledge or passive participation on the part of the candidate and occurs when the candidate engages in substantial discussion or negotiation with the political party regarding the contents, timing, type, or frequency of the communication or when the candidate has the ability to direct or control the political party's expenditure in a meaningful way, such that the candidate and the political party engage in a joint venture.[15] The determination as to whether a particular expenditure in a judicial campaign constitutes an "in-kind contribution" must be made on a case-by-case basis after a consideration of the totality of the circumstances.[16] For instance, when a judicial candidate requests, suggests, directs, or exercises some degree of control over a political party's expenditure on behalf of the candidate's campaign or engages in substantial discussion or negotiation with the political party regarding the content, timing, type, or frequency of the advertising, the expenditure becomes an in-kind contribution to the candidate's campaign committee.[17]

Footnotes

1 Brady v. Cortes, 873 A.2d 795 (Pa. Commw. Ct. 2005), order aff'd, 582 Pa. 423, 872 A.2d 170 (2005) and (disapproved of on other grounds by, Otter v. Cortes, 602 Pa. 516, 980 A.2d 1283 (2009)).

2 Evans v. State Election Bd. of State of Okl., 1990 OK 132, 804 P.2d 1125 (Okla. 1990).

3 Winston v. Moore, 244 Pa. 447, 91 A. 520 (1914).

4 McCulley v. State (State Report Title: The Judges' Cases), 102 Tenn. 509, 53 S.W. 134 (1899).

5 Cathey v. Weissburd, 202 Cal. App. 3d 982, 249 Cal. Rptr. 204 (2d Dist. 1988).

6 Hand v. Winter, 2017-NMSC-005, 388 P.3d 651 (N.M. 2016).

7 Sheldon v. Bjork, 142 A.D.3d 763, 36 N.Y.S.3d 768 (4th Dep't 2016).

8 White v. Stanley, 707 S.W.2d 883 (Tex. 1986).

9 Williams-Yulee v. Florida Bar, 135 S. Ct. 1656, 191 L. Ed. 2d 570 (2015).

10 Williams-Yulee v. Florida Bar, 135 S. Ct. 1656, 191 L. Ed. 2d 570 (2015).

11 In re Shanley, 98 N.Y.2d 310, 746 N.Y.S.2d 670, 774 N.E.2d 735 (2002).
A candidate for judicial office should not personally solicit or accept campaign funds; such actions violate the Judicial Code of Ethics; however, a committee established by a judicial candidate, including an incumbent judge, may solicit or accept funds for such candidate's campaign. Matter of Karr, 182 W. Va. 221, 387 S.E.2d 126 (1989).

12 American Civil Liberties Union of Florida, Inc. v. The Florida Bar, 744 F. Supp. 1094 (N.D. Fla. 1990).
As to the prohibition against political activity by judges once elected to office, see § 45.

13 Disciplinary Counsel v. Spicer, 106 Ohio St. 3d 247, 2005-Ohio-4788, 834 N.E.2d 332 (2005).

14 Disciplinary Counsel v. Spicer, 106 Ohio St. 3d 247, 2005-Ohio-4788, 834 N.E.2d 332 (2005).

15 Disciplinary Counsel v. Spicer, 106 Ohio St. 3d 247, 2005-Ohio-4788, 834 N.E.2d 332 (2005).

16 Disciplinary Counsel v. Spicer, 106 Ohio St. 3d 247, 2005-Ohio-4788, 834 N.E.2d 332 (2005).

17 Disciplinary Counsel v. Spicer, 106 Ohio St. 3d 247, 2005-Ohio-4788, 834 N.E.2d 332 (2005).

End of Document